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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/488,181

01/20/2000

Wassim A. Matragi

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7590

06/07/2004

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EXAMINER

ABELSON, RONALD B

ART UNIT

PAPER NUMBER

2666

12

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/488,181

Applicant(s)

MATRAGI ET AL.

Examiner

Ronald Abelson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-9, 12-16, 18-21 and 24 is/are rejected.
- 7) ☒ Claim(s) 5, 10, 11, 17, 22 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

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**1. Withdrawal of Finality**

2. Applicant's request for reconsideration of the finality (see amendment dated 11/24/2003) of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

**Specification**

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The term "such as" occurs in line 2 of the abstract.

The length of the abstract is greater than 150 words.

Appropriate corrections are required.

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***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1 and 13 recite the limitation "said congested call processor" in claim 1 line 8 and claim 13 line 8. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 3, 8, 9, 12, 13, 15, 20, 21, and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Kunimoto (US 6,396,808).

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Regarding claims 1, 8, 13, and 20, Kunimoto teaches a method and apparatus for an overload control method for use in a network employing distributed call processing (fig. 24).

The system receives a call set up request from an end terminal (fig. 24 see message 11-iA).

The system determines if sufficient resources exist to process the call set up request (fig. 24 box 40A: col. 23 line 66 - col. 24 line 1).

The system identifies an alternate call processor to process the call set up request using a list of call processors if sufficient resources do not exist (col. 23 line 66 - col. 24 line 6). Note, in the passage provided, the list of Kunimoto consists of switching subsystem 2B.

The system forwards the call set up request to the identified alternate call processor with an identifier of the congested call processor (col. 23 line 66 - col. 24 lines 6 - 11).

Regarding claims 13 and 20, in addition to the limitations previously listed 1, a memory (fig. 2 box 106, col. 9 lines 41-43) for storing computer readable code and a processor (fig. 2 box 105, col. 9 lines 41-48).

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Regarding claims 8 and 20, in addition to the limitations previously listed, setting a flag associated with the congested call processor indicating that the congested call processor is congested (fig. 24 step 510: overload state, notice from the processor, col. 23 line 66 - col. 24 line 1).

Regarding claims 3 and 15, the identifying step further comprises the step of evaluating a congestion indicator flag associated with each potential alternate call processor, wherein the congestion indicator flag is set if a congestion message is received from the corresponding alternate call processor (fig. 24 signal 557). Note, if call processor 2B could not handle the call due to congestion, it would not send a CONNECT message.

Regarding claim 9 and 21, the system determines if sufficient resources exist to process the forwarded call set up request. Note, if call processor 2B could not handle the call due to congestion, it would not send a CONNECT message.

Regarding claims 12 and 24, the system receives a call set up request from an end terminal (fig. 24 signal 11-iA), determines if sufficient resources exist to process the call set up request (col. 23 line 66 - col. 24 line 1), identifies an

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alternate call processor to process the call set up request using (fig. 24 element 520, transmits a message to system 2B, col. 23 line 66 - col. 24 line 4) using the flag associated with each potential alternate call processor. Note, the examiner associates the flag of the applicant with the overload occurrence notice (fig. 24 element 520) of the reference.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that

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was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 1-4, 6-9, 12-16, 18-21, and 24 rejected under 35 U.S.C. 103(a) as being unpatentable over McAllister (US 6,215,765) in view of Krasner (US 6,104,338).

Regarding claims 1, 8, 13, and 20, McAllister teaches a method and apparatus for an overload control method (failure, congestion: col. 2 lines 62-65, crankback: col. 3 lines 25-27) for use in a network employing distributed call processing.

The system receives a call set up request from an end terminal (col. 3 lines 5-7).

The system determines if sufficient resources exist to process the call set up request (col. 3 lines 7-9).

The system identifies an alternate call processor to process the call set up request using a list of call processors if sufficient resources do not exist (col. 3 lines 25-27).

The system forwards the call set up request to the identified alternate call processor with an identifier of the congested call processor (col. 3 lines 32-37).



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Regarding claims 13 and 20, in addition to the limitations previously listed, a memory for storing computer readable code and a processor (fig. 1: contained within nodes A-C).

McAllister fails to teach the call set up request to the identified alternate call processor is sent in response to the call processor being congested.

Krasner teaches the call set up request to the identified alternate call processor is sent in response to the call processor being congested (fig. 2 box 102b, 110, 109, col. 8 lines 59-65).

Therefore it would have been obvious to one of ordinary skill in the art, having both McAllister and Krasner before him/her and with the teachings [a] as shown by McAllister, a method and apparatus for an overload control method for use in a network employing distributed call processing, and [b] as shown by Krasner, the call set up request to the identified alternate call processor is sent in response to the call processor being congested, to be motivated to modify the system of McAllister by sending a crankback message if the link to the call processor or the call processor itself is congested. This modification can be performed in software. This would improve the system not

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transmitting data to call processors that are currently congested.

Regarding claims 8 and 20, in addition to the limitations previously listed, setting a flag associated with the congested call processor indicating that the congested call processor is congested (McAllister: record of the Route and Route list, col. 3 lines 32-34). Note, in the system of the combination of both McAllister and Krasner congestion is recorded if either the link or the call processor is congested.

Regarding claims 2 and 14, the call processor that previously received a forwarded call set up request within a predefined interval is not selected as the alternate call processor during the identifying step (McAllister: col. 3 lines 34-37).

Regarding claims 3 and 15, the identifying step further comprises the step of evaluating a congestion indicator flag associated with each potential alternate call processor, wherein the congestion indicator flag is set if a congestion message is received from the corresponding alternate call processor

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(McAllister: col. 3 lines 39-41). Note, all possible routes on the list are examined before "cranking back" one more hop.

Regarding claims 4 and 16, setting a flag indicating that the selected alternate call processor received the forwarded call set up request (McAllister: record of the Route and Route List, col. 3 lines 32-37).

Regarding claims 6 and 18, evaluating a total congestion indicator flag indicating whether all potential alternate call processors are congested (McAllister: col. 3 lines 39-41).

Regarding claims 7 and 19, the list of call processors is an ordered list (McAllister: next available route, col. 3 lines 36-37).

Regarding claim 9 and 21, the system determines if sufficient resources exist to process the forwarded call set up request (McAllister: col. 3 lines 7-9).

Regarding claims 12 and 24, the system receives a call set up request from an end terminal (McAllister: col. 3 lines 5-7), determines if sufficient resources exist to process the call set

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up request (McAllister: col. 3 lines 7-9), identifies an alternate call processor to process the call set up request using (McAllister: col. 3 lines 25-27) using the flag associated with each potential alternate call processor (McAllister: record of the Route and Route List, col. 3 lines 32-37).

***Allowable Subject Matter***

11. Claims 5, 10, 11, 17, 22 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding claims 5, 17, and 23, nothing in the prior art of the record teaches or fairly suggests the flag indicating the alternate call processor automatically expires after a predefined period in view of the prior art teachings of the combination of McAllister and Krasner, in combination with all the other limitations listed in the claim. In contrast, McAllister neither teaches nor suggests returning from the alternate call processor.

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Regarding claims 10 and 22, nothing in the prior art of the record teaches or fairly suggests setting a timer associated with the flag in view of the prior art teachings of the combination of McAllister and Krasner, in combination with all the other limitations listed in the claim. In contrast, McAllister neither teaches nor suggests returning from the alternate call processor.

#### ***Response to Arguments***

12. Applicant's arguments with respect to independent claims 1, 8, 13, and 20 have been considered but are moot in view of the new ground(s) of rejection. The examiner agrees with the applicant that McAllister does not address congestion of the call processors (see amendment dated 11/24/2003: pg. 3 line 18). Therefore, a new search was performed and a new office action is issued.

#### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald

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Abelson whose telephone number is (703) 306-5622. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on (703) 308-5463. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*RA*  
Ronald Abelson  
Examiner  
Art Unit 2666

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5/25/04

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